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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID GREEN, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

DR PEPPER SNAPPLE GROUP, INC.,

Defendant.

CV12-09567

Case No. _____

CLASS ACTION COMPLAINT**DEMAND FOR JURY TRIAL**

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 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 LOS ANGELES

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1 Plaintiff David Green (“Plaintiff”), by and through his undersigned counsel,
2 alleges the following based upon his own personal knowledge and the investigation of
3 his counsel. Plaintiff believes that substantial evidentiary support will exist for the
4 allegations set forth herein after a reasonable opportunity for discovery.

5 **NATURE OF THE ACTION**

6 1. This is a proposed class action against Dr Pepper Snapple Group, Inc.
7 (“Defendant”) for misleading consumers about the nutritional qualities, health
8 qualities, and ingredients of its soft drinks, namely, 7UP Cherry Antioxidant, Diet
9 7UP Cherry Antioxidant, 7UP Mixed Berry Antioxidant, Diet 7UP Mixed Berry
10 Antioxidant, 7UP Pomegranate Antioxidant, and Diet 7UP Pomegranate Antioxidant,
11 as well as other soft drink products sold under the “7UP” brand name that Defendant
12 marketed, labeled, and/or advertised as including antioxidants (collectively, the
13 “Product” or “Products”).

14 2. During the period September 6, 2006, to the present (the “Class Period”),
15 Defendant engaged in a widespread marketing and advertising campaign to mislead
16 consumers about the nutritional qualities, health qualities, and ingredients of the
17 Products. Specifically, Defendant conveyed the message that the Products were
18 healthful, natural, and antioxidant-rich beverages that derived their antioxidant content
19 from real cherries or real berries.

20 3. By misleading consumers about the nutritional qualities, healthfulness,
21 and ingredients of the Products as detailed herein, Defendant was able to distinguish
22 the Products from similar soft drinks and, thereby, command a premium price for the
23 Products. Defendant was motivated to mislead consumers for no other reason than to
24 take away market share from competing products and increase its own sales and
25 profits.

26 4. Defendant conveyed its misleading message through a widespread
27 marketing and advertising campaign on the packaging of the Products and on various
28

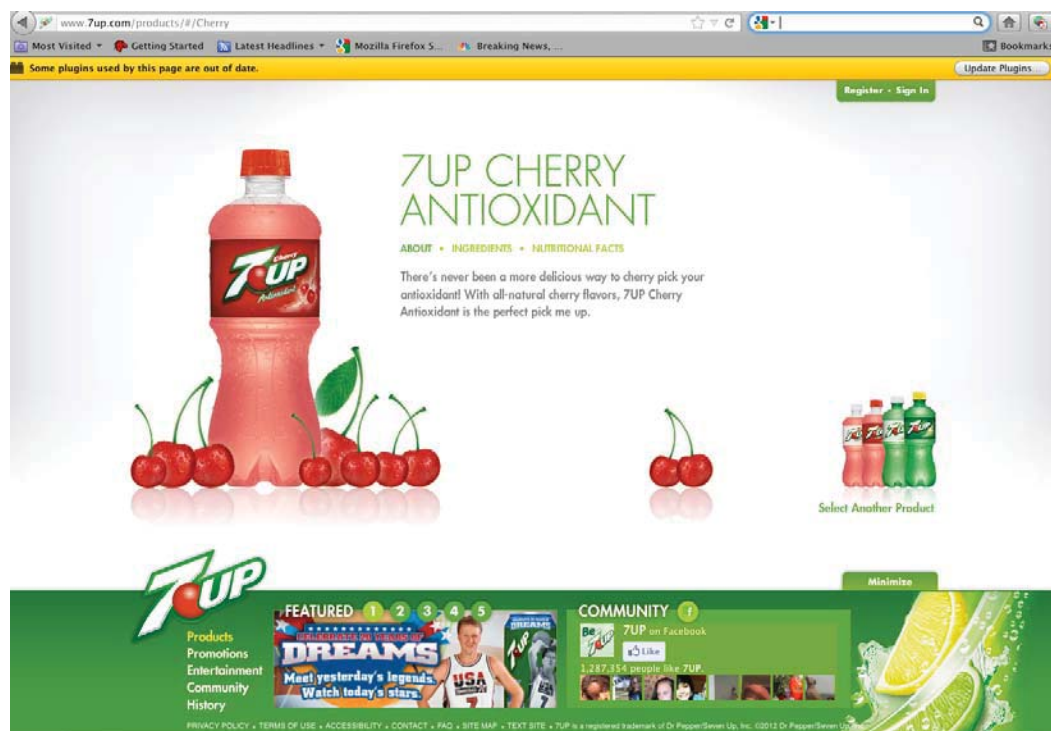
1 websites, including Defendant's 7UP brand website, <http://www.7up.com> (the "7UP
2 Website").

3 5. For example, Defendant asserts that the Products contain antioxidants,
4 including by using the representation "Antioxidant" in the Product names and on the
5 Product packaging.

6 6. Defendant also prominently displays pictures of cherries or berries on the
7 Product packaging. Each individual can or bottle of the Product displays images of
8 real fruit directly below the word "Antioxidant," as does the outer packaging of
9 Product multi-can or multi-bottle containers. See graphic insert;
10 <http://www.7up.com/products/#/Cherry> (last visited Aug. 27, 2012);
11 <http://www.7up.com/products/#/MixedBerry> (last visited Apr. 27, 2012).



7. Further, on the 7UP Website, Defendant displays 7UP Cherry Antioxidant surrounded by images of real cherries, along with the statements “There’s never been a more delicious way to cherry pick your antioxidant! With all-natural cherry flavors, 7UP Cherry Antioxidant is the perfect pick me up.” *See* graphic insert; <http://www.7up.com/products/#/Cherry> (last visited Aug. 27, 2012). Further, in the recent past, the 7UP Website displayed animated images of falling cherries each time a visitor highlighted an image of the 7UP Cherry Antioxidant soft drink. *See id.* (last visited Apr. 27, 2012).



8. On the 7UP Website, Defendant also displays Diet 7UP Cherry Antioxidant surrounded by images of real cherries, along with the statements “Diet 7UP Cherry Antioxidant has the same great taste without the calories of the original. A delicious way to cherry pick your antioxidant!” *See* <http://www.7up.com/products/#/Cherry> (last visited Aug. 27, 2012).

1 9. The representation “Antioxidant,” which is part of the name of each of
2 the Products, is central to the marketing of the Products and is displayed prominently
3 on their packaging. The images of real cherries and real berries are also central to the
4 marketing of the Products, and these images are displayed prominently on the Product
5 packaging and are often juxtaposed with the representation “antioxidant”.

6 10. Contrary to Defendant’s claims and representations, the Products do not
7 contain any real cherries, real berries, or even extracts from those fruits. Nor do the
8 Products derive their antioxidant content from real, antioxidant-rich cherries; real,
9 antioxidant-rich raspberries, blackberries, and cranberries; or real, antioxidant-rich
10 pomegranates. Unbeknownst to the average consumer, the Products contain only one
11 antioxidant—vitamin E.

12 11. Further, as explained in detail below, the minimal amount of added
13 vitamin E in the Products is insufficient to provide consumers with the health benefits
14 that Defendant’s representations lead them to believe the Products are able to confer.
15 Defendant’s representations are especially misleading in light of other ingredients in
16 the Products that are dangerous to consumers’ health, such as high fructose corn syrup
17 in the non-“Diet” Products and the artificial sweeteners acesulfame potassium and
18 aspartame in the “Diet” Products.

19 12. Accordingly, Defendant’s labeling and naming of the Products as
20 “antioxidant”; Defendant’s inclusion of images of real cherries, real berries, or real
21 pomegranates on the Product packaging and in the Product marketing and advertising,
22 often juxtaposed with the term “antioxidant”; and the other representations detailed
23 herein are false, misleading, and designed to deceive consumers into purchasing
24 Defendant’s Products. Plaintiff brings this action to stop Defendant’s misleading
25 practices.

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JURISDICTION AND VENUE

13. This Court has original jurisdiction over this proposed class action pursuant to 28 U.S.C. § 1332(d), which, under the provisions of the Class Action Fairness Act (“CAFA”), explicitly provides for the original jurisdiction of the federal courts in any class action in which at least 100 members are in the proposed plaintiff class, any member of the plaintiff class is a citizen of a State different from any defendant, and the matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interest and costs. Plaintiff alleges that the total claims of individual members of the proposed Class (as defined herein) are well in excess of \$5,000,000.00 in the aggregate, exclusive of interest and costs.

14. Venue for this action properly lies in this District pursuant to 28 U.S.C. § 1391. Substantial acts in furtherance of the alleged improper conduct, including Defendant’s dissemination of false information regarding the nutritional qualities, health qualities, and ingredients of the Products, occurred within this District.

PARTIES

15. Plaintiff David Green resides in Sherman Oaks, California, and has no intention of changing his residence. During the Class Period, Plaintiff Green bought 7UP brand Products bearing the “Antioxidant” representation on the Product packaging and in the Product name. In deciding to purchase the Products, Plaintiff Green relied upon Defendant’s misleading inclusion of the word “Antioxidant” in the Product name and on the Product packaging, juxtaposed with images of real cherries or real berries, which suggested to Plaintiff Green that the Products provided the health benefits associated with the antioxidants in real cherries or real berries. Had Plaintiff known at the time he purchased the Products that they did not contain real cherries or real berries; that their antioxidant content was not derived from real cherries or real berries, or even extracts from those fruits, but instead was based on Defendant’s fortification of the Products with an isolated antioxidant; and that the

1 only antioxidant in the Products, vitamin E, was only present in a minimal amount
2 that was insufficient to provide Plaintiff Green with any health benefits; Plaintiff
3 Green would not have purchased the Products.

4 16. Defendant Dr Pepper Snapple Group, Inc. is a Delaware corporation with
5 its principal place of business in Plano, Texas. Dr Pepper Snapple Group, Inc.
6 markets and distributes 7UP Cherry Antioxidant, Diet 7UP Cherry Antioxidant, 7UP
7 Mixed Berry Antioxidant, Diet 7UP Mixed Berry Antioxidant, 7UP Pomegranate
8 Antioxidant, Diet 7UP Pomegranate Antioxidant, and other similar products
9 throughout California and the nation.

10 **SUBSTANTIVE ALLEGATIONS**

11 17. The images of real cherries and real berries on the Product packaging and
12 in the Product marketing and advertising suggest to the average consumer that the
13 Products contain real cherries or real berries, including real raspberries, real
14 blackberries, real cranberries, and real pomegranates, or that the Products contain
15 extracts from these fruits.

16 18. Defendant's juxtaposition of the representation "Antioxidant" with
17 images of real cherries or real berries suggests to the average consumer that any
18 antioxidant content in the Products is derived from real cherries or real berries.

19 19. Unfortunately for consumers, the Products do not contain any real
20 cherries, real berries, or even extracts from those fruits. Nor do the Products derive
21 their antioxidant content from real, antioxidant-rich cherries; real, antioxidant-rich
22 raspberries, blackberries, or cranberries; or real, antioxidant-rich pomegranates.
23 Instead, Defendant bases its antioxidant representations solely on its fortification of
24 the Products with a trace amount of a form of vitamin E called d-alpha tocopheryl
25 acetate—the only antioxidant in the Products.

26 20. Moreover, the Products do not provide the health benefits that reasonable
27 consumers associate with antioxidants.

21. Defendant's addition of vitamin E to the Products provides only 15% of the Food and Drug Administration's ("FDA") Recommended Daily Intake ("RDI") of vitamin E per 12 ounce can. Current scientific research, however, does not indicate that vitamin E provides significant health benefits at this level.

22. For example, studies have found that vitamin E doses greater than 400 international units every other day are required to provide humans with health benefits. *See* H.D. Sesso et al., *Vitamin E and C in the Prevention of Cardiovascular Disease in Men*, 300 JAMA 2123, 2123 (2002) (finding that vitamin E doses greater than 400 international units every other day are required to suppress elevated systemic oxidative stress in humans); *see also* L. Jackson Roberts II et al., *The Relationship Between Dose of Vitamin E and Suppression of Oxidative Stress in Humans*, 43 FREE RADIC. BIOL. MED. 1388, 1391-1392 (2007). By comparison, the RDI established by the FDA for vitamin E is 30 international units. *See* 21 C.F.R. § 101.9(c)(8)(iv). At 10% RDI per serving, the Products contain less than 3 international units per serving—only 0.75% of the amount of vitamin E that scientific research establishes is required to provide humans with health benefits.

23. Moreover, consumers seeking simply to meet the RDI for vitamin E are also unlikely to experience health benefits from 7UP Antioxidant Products. The National Institutes of Health confirms that vitamin E deficiency is rare, and the average American likely exceeds the RDI for vitamin E. National Institutes of Health, Office of Dietary Supplements, *Dietary Supplement Fact Sheet: Vitamin E*, available at <http://ods.od.nih.gov/factsheets/VitaminE-HealthProfessional/> (accessed Oct. 11, 2011).

24. Further, scientific research suggests that isolated antioxidants, such as the vitamin E added to Defendant's Products, do not provide the same health benefits as a

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1 diet rich in fruits and vegetables.¹ Clinical trials indicate that individual antioxidants,
 2 taken alone, do not appear to have consistent preventative effects. *See, e.g.,* Rui Hai
 3 Liu, *Health Benefits of Fruits and Vegetables are from Additive and Synergistic*
 4 *Combinations of Phytochemicals*, 78 Am. J. Clinical Nutrition 517S, at 518S (2003);
 5 *see also* National Institutes of Health, Office of Dietary Supplements, *Dietary*
 6 *Supplement Fact Sheet: Vitamin E*, available at [http://ods.od.nih.gov/factsheets/](http://ods.od.nih.gov/factsheets/VitaminE-HealthProfessional/)
 7 [VitaminE-HealthProfessional/](http://ods.od.nih.gov/factsheets/VitaminE-HealthProfessional/) (accessed Oct. 11, 2011) (advising consumers to obtain
 8 antioxidants such as vitamin E through healthful foods such as almonds, peanut butter,
 9 broccoli, and spinach, rather than through supplements or fortified foods).

10 25. In this regard, the United States Department of Agriculture notes that

11 [a] fundamental premise of the Dietary Guidelines [for Americans] is that
 12 nutrients should come primarily from foods. Foods in nutrient-dense,
 13 mostly intact forms contain not only the essential vitamins and minerals
 14 that are often contained in nutrient supplements, but also dietary fiber and

15 ¹ Numerous studies establish that consuming whole fruits and vegetables benefits
 16 health and suggest that consumption of individual vitamins does not provide the same
 17 benefits. *See e.g.,* Penny M. Kris-Etherton et al., *Bioactive Compounds in Foods:*
 18 *Their Role in the Prevention of Cardiovascular Disease and Cancer*, 113 Am. J. Med.
 19 71S, 71S–88S (2002) (“Numerous epidemiologic studies indicate that an increase in
 20 the consumption of fruits and vegetables is associated with a decrease in the incidence
 21 of cardiovascular disease (CVD), [coronary heart disease], and stroke.”); Y. Kelly et
 22 al., *Nutrition and Respiratory Health in Adults: Findings from the Health Survey for*
 23 *Scotland*, 21 European Respiratory J. 664, 664–671 (2003) (“[T]he active agent(s), or
 24 the most beneficial combinations of dietary components are contained within whole
 25 foods. It may be that improving the diet, by increasing the consumption of fresh fruit,
 26 vegetables and fish, rather than consumption of vitamin supplements, will be
 27 beneficial in helping to protect against airway disease.”); Manuela Blasa et al., *Fruit*
 28 *and Vegetable Antioxidants in Health*, in *Bioactive Foods Promoting Health: Fruits*
and Vegetables 37, 37–58 (Ronald Ross Watson & Victor R. Preedy eds., 2010)
 (“The synergy among phytochemicals is one of the reasons that nutritional guidelines
 insist on varying the foods in one’s diet, particularly fruits and vegetables.”).

1 other naturally occurring substances that may have positive health
2 effects.

3 United States Department of Agriculture, *Dietary Guidelines for Americans, 2010*,
4 Ch. 5 p. 49 (Jan. 31, 2011), *available at* [http://www.cnpp.usda.gov/DGAs2010-](http://www.cnpp.usda.gov/DGAs2010-PolicyDocument.htm)
5 [PolicyDocument.htm](http://www.cnpp.usda.gov/DGAs2010-PolicyDocument.htm) (click on “Chapter 5: Building Healthy Eating Patterns”).

6 26. Not only do the Products fail to provide the health benefits suggested by
7 the representations and images on the packaging and in the Product marketing, the
8 Products include ingredients that are harmful or potentially harmful to human health.

9 27. The non-“Diet” Products are in fact nothing more than slightly fortified
10 sugar water. One serving of 7UP Cherry Antioxidant, for example, contains 38 grams
11 of sugars and 140 calories. The non-“Diet” Products also include high fructose corn
12 syrup, an artificial ingredient that scientific research has established is dangerous to
13 human health. *See, e.g.,* G.A. Bray, S.J. Nielsen, & B.M. Popkin, *Consumption of*
14 *high-fructose corn syrup in beverages may play a role in the epidemic of obesity*,
15 79(4) *Am. J. of Clinical Nutrition* 537, 537–43 (2004).

16 28. While the “Diet” Products do not contain added sugars or high fructose
17 corn syrup, they do contain the artificial sweeteners acesulfame potassium and
18 aspartame, both of which are synthetic. There is some scientific evidence that
19 artificial sweeteners such as these are carcinogenic to animals² and that they increase

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21 ² *See* Myra L. Karstadt, *Testing Needed for Acesulfame Potassium, an Artificial*
22 *Sweetener* 114 *Environ. Health Perspectives* A516 (Sept. 2006); Morando Soffritti,
23 *Acesulfame Potassium: Soffritti Responds*, 114 *Environ. Health Perspectives* A516
24 (Sept. 2006); Morando Soffritti et al., *Life-Span Exposure to Low Doses of Aspartame*
25 *Beginning During Prenatal Life Increases Cancer Effects in Rats*, 115 *Environ.*
26 *Health Perspectives* 1293 (2007), *available at* [http://ehp03.niehs.nih.gov/article/](http://ehp03.niehs.nih.gov/article/info:doi/10.1289/ehp.10271)
27 [info:doi/10.1289/ehp.10271](http://ehp03.niehs.nih.gov/article/info:doi/10.1289/ehp.10271); Morando Soffritti et al., *First Experimental*
28 *Demonstration of the Multipotential Carcinogenic Effects of Aspartame Administered*
in the Feed to Sprague-Dawley Rats, 114 *Environ. Health Perspectives* 379 (2006).

1 the risk of preterm birth in humans.³

2 29. The Products also include an ingredient called Red 40, which may also
 3 impose health risks. See Shuji Tsuda, et al., *DNA damage induced by red food dyes*
 4 *orally administered to pregnant and male mice*, 61(1) Toxicological Sci. 92, 92–99
 5 (2001), available at <http://www.ncbi.nlm.nih.gov/pubmed/11294979?dopt=Abstract>;
 6 Charles V. Vorhees, et al., *Developmental toxicity and psychotoxicity of FD and C red*
 7 *dye No 40 (allura red AC) in rats*, 28(3) Toxicology 207, 207–17 (Oct. 1983),
 8 available at <http://www.ncbi.nlm.nih.gov/pubmed/6636206?dopt=Abstract>; L.
 9 Koutsogeorgopoulou, et al., *Immunological aspects of the common food colorants,*
 10 *amaranth and tartrazine*, 40(1) Veterinary & Hum. Toxicology 1, 1–4 (Feb. 1998),
 11 available at <http://www.ncbi.nlm.nih.gov/pubmed/9467198?dopt=Abstract>.

12 30. In summary, Defendant’s representations, including the representation
 13 “Antioxidant” juxtaposed with images of real cherries or real berries, mislead
 14 reasonable consumers into believing that the Products contain real cherries or real
 15 berries, and/or believing that the antioxidant content of the Products is derived from
 16 real cherries or real berries, or extracts from these fruits, even though the Products do
 17 not contain real cherries or real berries, or extracts from those fruits, and the only
 18 antioxidant in the Products—vitamin E—is only present in the Products due to
 19 fortification by Defendant. Defendant thus misleads reasonable consumers into
 20 believing that the Products provide antioxidant-related health benefits that are the
 21 same as or similar to the antioxidant-related health benefits provided by fruits and
 22 vegetables naturally rich in many nutrients and phytonutrients, only one of which is
 23 vitamin E. The minimal amount of vitamin E in the Products and the fact that vitamin

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 25 ³ Thorhallur I. Halldorsson et al., *Intake of Artificially Sweetened Soft Drinks and Risk*
 26 *of Preterm Delivery: A Prospective Cohort Study in 59,334 Danish Pregnant Women*,
 27 92 Am. J. Clin. Nutr. 626 (2010).
 28

1 E exists in the Products in isolation as an additive mean that the Products will not
2 provide consumers with the health benefits that Defendant's representations lead them
3 to expect, and, even worse, the high sugar content, high fructose corn syrup,
4 aspartame, acesulfame potassium, and/or Red 40 found in the Products are actually
5 dangerous to consumers' health. Defendant's use of the term "Antioxidant" and the
6 other representations and images detailed herein in the marketing, labeling, and
7 advertising of the Products is thus nothing more than a marketing gimmick intended to
8 deceive consumers into purchasing the Products. Accordingly, Defendant's
9 representations concerning the nutritional qualities, health qualities, and ingredients of
10 the Products are misleading, deceptive, and unlawful.

11 31. Moreover, Defendant's fortification of the Products with chemical
12 additives is in direct violation of the FDA's Fortification Policy. 21 C.F.R. § 104.20
13 (the "Fortification Policy"). The Fortification Policy states specifically that the FDA
14 "does not encourage indiscriminate addition of nutrients to foods, ***nor does it consider***
15 ***it appropriate to fortify ... snack foods such as ... carbonated beverages.***" See 21
16 C.F.R. § 104.20(a) (emphasis added). Because Defendant fortifies the Products,
17 which are all carbonated beverages, with vitamin E, Defendant has engaged in actions
18 that the FDA does not consider appropriate, as the Fortification Policy explicitly
19 states.

20 32. According to the FDA, the Fortification Policy has the full force and
21 effect of law. See Food and Drug Administration, *Guidance for Industry: Food*
22 *Labeling; Nutrient Content Claims; Definition for "High Potency" and Definition for*
23 *"Antioxidant" for Use in Nutrient Content Claims for Dietary Supplements and*
24 *Conventional Foods; Small Entity Compliance Guide*, 3 (May 1, 2011), available at
25 [http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocu](http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm063064.htm)
26 [ments/FoodLabelingNutrition/ucm063064.htm](http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/FoodLabelingNutrition/ucm063064.htm); see also Letter from Food and Drug
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Administration, to Miles V. McEvoy, Deputy Administrator, National Organic Program (Apr. 14, 2011), at 4, *available at* <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5090415> (stating that since “the provisions of the fortification policy have been incorporated into two labeling regulations which have the force and effect of law . . . FDA may issue a warning letter and take enforcement action if a manufacturer markets a food bearing one of these nutrient content claims and the food contains a nutrient addition that is inconsistent with the fortification policy.”).

33. The federal Courts have also recognized that the Fortification Policy has legally binding effect. For example, the United States District Court for the Eastern District of New York explained in 2010 that “[t]he FDA Fortification Policy is itself non-binding but . . . is incorporated by reference into binding FDA regulations. As the FDA has explained:

While it is true that the fortification policy is only a guideline, in the context of new § 101.54(e)(1)(ii), FDA has subjected the use of § 104.20 (21 C.F.R. 104.20) to notice and comment rulemaking. Interested persons were given notice that FDA intends to use that provision as more than a guideline. Such persons had an opportunity to object.... No comments did. Therefore, the fact that part 104 (21 CFR part 104) is generally intended to be used as a guideline has no significance here.

Ackerman v. Coca-Cola Co., Case No. CV–09–0395 (JG)(RML), 2010 WL 2925955, at *9, n. 16 (E.D.N.Y. July 21, 2010) (citing 58 Fed. Reg. 2302, 2362).

34. The FDA has issued several warning letters to companies, including Defendant and The Coca-Cola Company, for similar violations of its Fortification Policy. *See, e.g.*, Letter from Food and Drug Administration to Larry D. Young, President and CEO, Dr Pepper Snapple Group (Aug. 30, 2010), *available at* <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm224571.htm>; Letter from Food and Drug Administration to Muhtar Kent, President and Chief

Executive Officer, The Coca-Cola Company (Dec. 10, 2008), *available at* <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2008/ucm1048050.htm>; *see generally Diet Coke Plus Proves to Be a Minus With the FDA*, 16 No. 12 FDA Advertising and Promotion Manual Newsletter 11 (2009).

35. Accordingly, Defendant's fortification of the Products, which are all carbonated beverages, with vitamin E violates the FDA Fortification Policy, which has the full force and effect of law and which the FDA routinely enforces.

CLASS ALLEGATIONS

36. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons in the United States who purchased Defendant's Products (as defined herein) during the Class Period (the "Class"). Excluded from the Class are officers and directors of Defendant, members of the immediate families of the officers and directors of Defendant, Defendant's legal representatives, heirs, successors or assigns, and any entity in which they have or have had a controlling interest.

37. At this time, Plaintiff does not know the exact number of Class members, but, given the nature of the claims and the number of retail stores selling Defendant's Products nationally, Plaintiff believes that the Class members are so numerous that joinder of all members of the Class is impracticable.

38. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- a. Whether Defendant labeled, marketed, advertised, and/or sold the Products to Plaintiff and those similarly situated using false, misleading, and/or deceptive statements or representations,

1 including statements or representations concerning the nutritional
2 qualities, health qualities, and ingredients of the Products;

3 b. Whether Defendant omitted and/or misrepresented material facts in
4 connection with the sales of the Products;

5 c. Whether Defendant participated in and pursued the common
6 course of conduct complained of herein; and

7 d. Whether Defendant's labeling, marketing, advertising, and/or
8 selling of the Products as healthful and nutritious constitutes an
9 unfair or deceptive consumer sales practice.

10 39. Plaintiff's claims are typical of those of the Class because Plaintiff, like
11 all members of the Class, purchased Defendant's Products in a typical consumer
12 setting and sustained damages from Defendant's wrongful conduct.

13 40. Plaintiff will adequately protect the interests of the Class and has retained
14 counsel who are experienced in litigating complex class actions. Plaintiff has no
15 interests that conflict with those of the Class.

16 41. A class action is superior to other available methods for the fair and
17 efficient adjudication of this controversy.

18 42. The prerequisites to maintaining a class action for injunctive or equitable
19 relief pursuant to Federal Rule of Civil Procedure 23(b)(2) are met, as Defendant has
20 acted or refused to act on grounds generally applicable to the Class, thereby making
21 appropriate final injunctive or equitable relief with respect to the Class as a whole.

22 43. The prosecution of separate actions by members of the Class would
23 create a risk of establishing inconsistent rulings and/or incompatible standards of
24 conduct for Defendant. For example, one court might enjoin Defendant from
25 performing the challenged acts, whereas another might not. Additionally, individual
26 actions could be dispositive of the interests of the Class even though certain Class
27 members might not be parties to such actions.

44. Defendant's conduct is generally applicable to the Class as a whole, and Plaintiff seeks, *inter alia*, equitable remedies with respect to the Class as a whole. As such, Defendant's systematic policies and practices make declaratory relief with respect to the Class as a whole appropriate.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Violation of the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.*)

45. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates such allegations by reference herein.

46. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code § 1750, *et seq.* (the "CLRA").

47. Plaintiff and members of the Class are "consumers," as the term is defined by California Civil Code § 1761(d), because they bought the Products for personal, family, or household purposes.

48. Plaintiff, members of the Class, and Defendant have engaged in "transactions," as that term is defined by California Civil Code § 1761(e).

49. The conduct alleged in this Complaint constitutes unfair methods of competition and unfair and deceptive acts and practices for the purposes of the CLRA, and the conduct was undertaken by Defendant in transactions intended to result in, and which did result in, the sale of goods to consumers.

50. As alleged more fully above, Defendant has violated the CLRA by falsely representing to Plaintiff and the Class members certain qualities of its Products.

51. As a result of engaging in such conduct, Defendant has violated California Civil Code § 1770(a)(5), (a)(7), and (a)(9).

1 52. Pursuant to California Civil Code § 1780(a)(2) and (a)(5), Plaintiff seeks
2 an order of this Court that includes, but is not limited to, an order requiring Defendant
3 to remove language and images on the Product packaging and in Product advertising
4 and marketing that indicates that the Products provide the health benefits associated
5 with antioxidants contained in real cherries or real berries, including but not limited to
6 the representation “Antioxidant” in the name of each Product and images of real
7 cherries or real berries on the Product packaging.

8 53. Plaintiff and members of the Class may be irreparably harmed and/or
9 denied an effective and complete remedy if such an order is not granted.

10 54. The unfair and deceptive acts and practices of Defendant, as described
11 above, present a serious threat to Plaintiff and members of the Class.

12 55. CLRA § 1782 NOTICE. On September 6, 2012, a CLRA demand letter
13 was sent to Defendant via certified mail that provided notice of Defendant’s violation
14 of the CLRA and demanded that within thirty (30) days from that date, Defendant
15 remedy the unlawful, unfair, false, and/or deceptive practices complained of herein.
16 The letter also stated that if Defendant refused to do so, a complaint seeking damages
17 in accordance with the CLRA would be filed. Defendant has failed to comply with
18 the letter. Accordingly, pursuant to California Civil Code § 1780(a)(3), Plaintiff, on
19 behalf of himself and all other members of the Class, seeks compensatory damages,
20 punitive damages, and restitution of any ill-gotten gains due to Defendant’s acts and
21 practices.

22 56. THEREFORE, Plaintiff prays for relief as set forth below.

23 **SECOND CAUSE OF ACTION**

24 **(Violation of California Business and Professions Code § 17200, *et seq.*)**
25 **(Unlawful Business Acts and Practices)**

26 57. Plaintiff repeats each and every allegation contained in the paragraphs
27 above and incorporates such allegations by reference herein.

1 58. Such acts of Defendant, as described above, and each of them
2 constitute unlawful business acts and practices.

3 59. In this regard, Defendant's marketing, advertising, packaging, labeling,
4 distributing, and selling of its Products violates California's Sherman Food, Drug and
5 Cosmetics Law, California Health & Safety Code § 109875, *et seq.* (the "Sherman
6 Law").

7 60. In relevant part, the Sherman Law declares that food is misbranded if
8 its labeling is false or misleading in any particular way and further provides that it is
9 unlawful for any person to misbrand any food. Cal. Health & Safety Code §§ 110660,
10 110765.

11 61. The Sherman Law defines a "person" as "any individual, firm,
12 partnership, trust, corporation, limited liability company, company, estate, public or
13 private institution, association, organization, group, city, county, city and county,
14 political subdivision of this state, other governmental agency within the state, and any
15 representative, agent, or agency of any of the foregoing." Cal. Health & Safety Code
16 § 109995. Defendant is a corporation and, therefore, a "person" within the meaning
17 of the Sherman Law.

18 62. The business practices alleged above are unlawful under the
19 California Consumers Legal Remedy Act, California Civil Code § 1750, *et seq.*
20 ("CLRA"), which forbids deceptive advertising.

21 63. The business practices alleged above are unlawful under California
22 Business and Professions Code § 17200, *et seq.* by virtue of violating § 17500, *et seq.*,
23 which forbids untrue advertising and misleading advertising.

24 64. As a result of the business practices described above, Plaintiff and the
25 Class members, pursuant to California Business and Professions Code § 17203, are
26 entitled to an order enjoining such future conduct on the part of Defendant and such
27 other orders and judgments which may be necessary to disgorge Defendant's ill-gotten
28

1 gains and to restore to any person in interest any money paid for its Products as a
2 result of the wrongful conduct of Defendant.

3 65. The above-described unlawful business acts and practices of
4 Defendant present a threat and reasonable likelihood of deception to Plaintiff and
5 members of the Class in that Defendant has systematically perpetrated and continues
6 to perpetrate such acts or practices upon members of the Class by means of its
7 misleading marketing, advertising, packaging, labeling, distributing, and selling of its
8 Products.

9 66. THEREFORE, Plaintiff prays for relief as set forth below.

10 **THIRD CAUSE OF ACTION**

11 **(Violation of California Business and Professions Code § 17200, *et seq.*)**
12 **(Fraudulent Business Acts and Practices)**

13 67. Plaintiff repeats each and every allegation contained in the paragraphs
14 above and incorporates such allegations by reference herein.

15 68. Such acts of Defendant as described above constitute fraudulent
16 business practices under California Business and Professions Code § 17200, *et seq.*

17 69. As more fully described above, Defendant's misleading
18 marketing, advertising, packaging, and labeling of its Products is likely to deceive
19 reasonable California consumers. Indeed, Plaintiff and other members of the Class
20 were unquestionably deceived regarding the characteristics of Defendant's Products,
21 as Defendant's marketing, advertising, packaging, and labeling of its Products
22 misrepresents and/or omits the true nutritional qualities, health qualities, and
23 ingredients of the Products. Defendant's portrayal of its Products as being made with
24 real cherries or real berries (or extracts from these real fruits) and being healthful and
25 rich in antioxidants is misleading and deceptive because, among other things more
26 fully described herein, the Products contain only minimal amounts of a single, isolated
27
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1 antioxidant that is present in the Products due to fortification by Defendant and
2 contain no real fruit.

3 70. This fraud and deception caused Plaintiff and members of the Class
4 to purchase more of Defendant's Products than they would have or to pay more than
5 they would have for Defendant's Products had they known that, as described more
6 fully herein, the representations and images on Defendant's Products conveying that
7 they are made from real cherries or real berries (or extracts from these real fruits), that
8 they are "Antioxidant" and provide the health benefits associated with real,
9 antioxidant rich cherries or berries, and that they are healthful are false and/or
10 misleading.

11 71. As a result of the business acts and practices described above, Plaintiff
12 and the Class, pursuant to California Business and Professions Code § 17203, are
13 entitled to an order enjoining such future conduct on the part of Defendant and such
14 other orders and judgments which may be necessary to disgorge Defendant's ill-gotten
15 gains and to restore to any person in interest any money paid for Defendant's Products
16 as a result of the wrongful conduct of Defendant.

17 72. THEREFORE, Plaintiff prays for relief as set forth below.

18 **FOURTH CAUSE OF ACTION**

19 **(Violation of California Business and Professions Code, § 17500, *et seq.*)**
20 **(Misleading and Deceptive Advertising)**

21 73. Plaintiff repeats each and every allegation contained in the paragraphs
22 above and incorporates such allegations by reference herein.

23 74. Plaintiff asserts this cause of action for violations of California Business
24 and Professions Code § 17500, *et seq.* for misleading and deceptive advertising
25 against Defendant.

26 75. At all material times, Defendant engaged in a scheme of offering its
27 Products for sale to Plaintiff and other members of the Class by way of, *inter alia*,
28

1 commercial marketing and advertising, the World Wide Web (Internet), product
2 packaging and labeling, and other promotional materials. Defendant's portrayal of its
3 Products as being made from real cherries or real berries and as being healthful and
4 rich in antioxidants is misleading and deceptive because, among other things more
5 fully described herein, the Products contain only minimal amounts of a single, isolated
6 antioxidant that is present in the Products due to fortification by Defendant and
7 contain no real fruit. Said advertisements were made within the State of California
8 and come within the definition of advertising as contained in Business and Professions
9 Code § 17500, *et seq.* in that such promotional materials were intended as
10 inducements to purchase Defendant's Products, are representations disseminated by
11 Defendant to Plaintiff and the Class members, and were intended to reach members of
12 the Class. Defendant knew, or in the exercise of reasonable care should have known,
13 that these statements were misleading and deceptive.

14 76. In furtherance of said plan and scheme, Defendant has prepared
15 and distributed within the State of California – via commercial marketing and
16 advertising, the World Wide Web (Internet), product packaging and labeling, and
17 other promotional materials – representations that misleadingly and deceptively
18 represent the Products as being made from real cherries or real berries, and as being
19 healthful and nutritious. Consumers, including Plaintiff, necessarily and reasonably
20 relied on these materials concerning Defendant's Products. Consumers, including
21 Plaintiff and the Class members, were among the intended targets of
22 such representations.

23 77. The above acts of Defendant, in disseminating said misleading and
24 deceptive representations throughout the State of California to consumers, including
25 Plaintiff and members of the Class, were and are likely to deceive reasonable
26 consumers, including Plaintiff and other members of the Class, by obfuscating the real
27 health qualities, nutritional qualities, and ingredients of the Products as more fully
28

1 detailed herein, in violation of the “misleading prong” of California Business and
2 Professions Code § 17500.

3 78. As a result of the above violations of the “misleading prong” of
4 California Business and Professions Code § 17500, *et seq.*, Defendant has been
5 unjustly enriched at the expense of Plaintiff and the other members of the Class.
6 Plaintiff and the Class members, pursuant to California Business and Professions
7 Code § 17535, are entitled to an order of this Court enjoining such future conduct on
8 the part of Defendant, and such other orders and judgments which may be necessary
9 to disgorge Defendant’s ill-gotten gains and restore to any person in interest any
10 money paid for its Products as a result of the wrongful conduct of Defendant.

11 79. THEREFORE, Plaintiff prays for relief as set forth below.

12 **FIFTH CAUSE OF ACTION**

13 **(Unjust Enrichment)**

14 80. Plaintiff realleges and incorporates the above paragraphs of this class
15 action Complaint as if set forth herein.

16 81. As a result of Defendant’s deceptive, fraudulent, and misleading
17 labeling, advertising, marketing, and sales of its Products, Defendant was enriched, at
18 the expense of Plaintiff, and all others similarly situated, through the payment of the
19 purchase price for Defendant’s Products.

20 82. Under the circumstances, it would be against equity and good conscience
21 to permit Defendant to retain the ill-gotten benefits that it received from Plaintiff the
22 members of the Class in light of the fact that the Products purchased by Plaintiff and
23 the members of the Class were not what Defendant purported them to be. Thus, it
24 would be unjust or inequitable for Defendant to retain the benefit without restitution to
25 Plaintiff and the members of the Class for the monies paid to Defendant for such
26 Products.

27 83. THEREFORE, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and the Class members seek relief against Defendant as follows:

A. For an order certifying the proposed Class herein under Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3); appointing Plaintiff as representatives of the class; and appointing his undersigned counsel as class counsel;

B. For a declaration that Defendant is financially responsible for notifying Class members of the pendency of this suit;

C. For an award of restitution pursuant to California Business & Professional Code §§ 17203, 17535;

D. For an award of disgorgement pursuant to California Business & Professional Code §§ 17203, 17535;

E. For an order enjoining Defendant's unlawful and deceptive acts and practices pursuant to California Business & Professional Code §§ 17203, 17535.

F. For injunctive relief, damages, and restitution pursuant to California Civil Code § 1780;

G. Monetary damages, including, but not limited to any compensatory, incidental, or consequential damages in an amount to be determined at trial, together with prejudgment interest at the maximum rate allowable by law with respect to the common law claims alleged;

H. Statutory damages in the maximum amount provided by law;

I. Punitive damages in accordance with proof and in an amount consistent with applicable precedent;

J. For an order awarding Plaintiff and the Class members the reasonable costs and expenses of suit, including their attorneys' fees; and

K. For any further relief that the Court may deem appropriate.

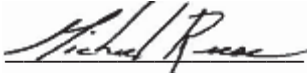
JURY TRIAL DEMANDED

Plaintiff and the members of the Class hereby demand a trial by jury.

Dated: November 8, 2012

Respectfully submitted,

REESE RICHMAN LLP

By: 

Michael R. Reese (State Bar No. 206773)

Kim E. Richman

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New York, New York 10001

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**CENTER FOR SCIENCE IN THE
PUBLIC INTEREST**

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AHowell@cspinet.org

Attorneys for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Consuelo B. Marshall and the assigned discovery Magistrate Judge is Charles Eick.

The case number on all documents filed with the Court should read as follows:

CV12- 9567 CBM (Ex)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:
 DR PEPPER SNAPPLE GROUP, INC.
 5301 Legacy Drive
 Plano, TX 75024

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

DAVID GREEN, on behalf of himself and all others
 similarly situated,

PLAINTIFF(S)

v.

DR PEPPER SNAPPLE GROUP, INC.,

DEFENDANT(S).

CASE NUMBER

CV12-09567

(CNLTX)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Michael R. Reese, whose address is REESE RICHMAN LLP, 875 Avenue of the Americas, 18th Floor, New York, NY 10001. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

NOV - 8 2012

Clerk, U.S. District Court

JULIE PRADO



Dated: _____

By: _____

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) DAVID GREEN, on behalf of himself and all others similarly situated,		DEFENDANTS DR PEPPER SNAPPLE GROUP, INC.,	
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Michael R. Reese (SBN 206773), REESE RICHMAN LLP, 875 Avenue of the Americas, 18th Floor, New York, NY 10001, (212) 643-0500; and Stephen Gardner, CENTER FOR SCIENCE IN THE PUBLIC INTEREST, Dallas, TX.		Attorneys (If Known) Van H. Beckwith, BAKER BOTTS L.L.P., 2001 Ross Avenue, Dallas, TX 75201, (214) 953-6500.	

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input checked="" type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from another district (specify): _____
 ☐ 6 Multi-District Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 28 U.S.C. §1332(d) (diversity jurisdiction)

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACTS <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus- Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability ADMINISTRATIVE <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: **CV12-09567**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Texas

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date November 8, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))